

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY

THURSDAY, THE 19TH OCTOBER 2006 / 27TH ASWINA 1928

CRL.A.No. 335 of 1997()

SC.10/1996 of ENQUIRY COMM. & SPL. JUDGE, TRIVANDRUM
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APPELLANT/ACCUSED:

P.SASIDHARAN, FORMERLY JOINT EXCISE COMMISSIONER,
EXCISE DEPARTMENT, RESIDING AT T.C.2/1419,
ASHIRWAD, VRINDAVAN GARDENS, PATTOM,
THIRUVANANTHAPURAM – 4.

BY ADV. SRI.V.N.ACHUTHA KURUP,B.S.SWATHI KUMAR

RESPONDENT/COMPLAINANT:

STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.K.M.FIROZ

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD
ON 19/10/2006, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

J.B.KOSHY, J.

Crl.A.NO.335 OF 1997

Dated 19th October, 2006

JUDGMENT

Appellant who was the accused in a criminal case No.10/1996 on the file of the Enquiry Commissioner & Special Judge, Thiruvananthapuram was convicted under section 5(2) read with section 5(1)(e) of Prevention of Corruption Act, 1947 and Section 13(2) read with Section 13(1)(e) of Prevention of Corruption Act, 1988. Appellant entered service of the Police Department as Deputy Superintendent of Police by direct recruitment in 1971. Thereafter, he had been holding different offices and in 1980 he was promoted as Superintendent of Police and worked in various capacities like Commissioner of Police, Thiruvananthapuram, Joint Excise Commissioner, Excise Department. He was conferred with I.P.S. in the year 1983. While holding the post of Deputy Inspector General of Police Training, he retired from service on 31.3.1995. Just before his retirement a charge sheet was issued to him. According to the charge sheet, from 1.1.1980 to 13.12.1994 the income of the accused and family members was Rs.20,84,968/= and expenditure was Rs.13,87,010.55 and

his likely earning should be only Rs.6,97,957.45. But, he had got assets of Rs.30,80,445.30 and has earned a sum of Rs.23,82,487.55 which was disproportionate to the known source of income. The court below found that disproportionate assets of the appellant was Rs.10,13,316.92 for the check-in period, i.e., 14 years from 1.1.1980 to 13.12.1994 and he was punished for having amassed unaccounted wealth during the above period.

2. Case of the appellant was that he was a graduate in Agriculture and he got employment as a clerk in 1958. Thereafter he was promoted as Agricultural Extension Officer and he became Block Development Officer in 1964. In 1971 he became Deputy Superintendent of Police and Superintendent of Police in 1980. Then he was conferred with IPS ranking considering his good and unblemished service and in 1992 he became Deputy Inspector General of Police. F.I.R. was registered just three months before his retirement as he was due to retire on 31.3.1995. Immediately after filing the F.I.R there was a raid in his house on 13.12.1994. From the raid Rs.7,000/= in cash, 49 sovereigns and Bank deposit of Rs.41,000/= were found out and seized. It was an admitted fact that his wife was also employed in Kerala State Electricity Board. She became a Divisional Accountant and later she opted for

voluntary retirement in 1990. The accused had three daughters and one son. The daughters were conducting a tailoring shop and have earnings of their own. After retirement of his wife tailoring concerns were done in partnership. His son became a doctor in 1990 and he has undergone house surgeoncy. Income, expenditure and assets of all members of the family were clubbed for alleging unaccounted wealth. A reading of the charge sheet itself would show that the total family income, assets etc. are taken without any split up details. Charges framed are as follows:

"That you while working as a public servant employed in the Police Department as Dy.S.P. (Administration), Trivandrum, Supdt. Of Police, Chief Security-Cum-Vigilance Officer, Kerala University, Supdt. Of Police, CBCID, Supdt. Of Police, Palakkad, Deputy Commissioner of Thiruvananthapuram City, Supdt. Of Police, Marine Enforcement, Commissioner of Police, Thiruvananthapuram City and Joint Excise Commissioner, Excise Department during the period from 1.1.1980 to 13.12.1994 as on 13.12.1994 you had been in possession of assets, pecuniary resources and property to the extent of Rs.23,82,487.55 which is disproportionate to your known sources of income and which you could not satisfactorily account and thereby committed criminal misconduct in discharge of your official duty and is punishable under S.5(2)(e) of the Prevention of Corruption Act, 1947 and S.13(2) of the Prevention of Corruption Act, 1988 and is within my cognizance."

Even in the police charge split up of details were not given and he was compelled to answer vague charges.

3. First contention raised was that charges are not specific and untrue. Wife of the accused was also a public servant who retired only in 1990. Check-in period starts from 1.1.1980 onwards. The charges were not specific as the total income, total assets and total expenditure etc. were taken. Now we will first come to the income assessed. The total income of the family assessed by the court during this period was Rs.29,99,044.20/= (pages 38 to 61 and paragraph 64 of the impugned judgment). The above includes his salary and allowances, loan taken from provident fund, bank, ICDS etc., salary of his wife, rent received from the buildings let out, interest received from NSS deposit etc., agricultural income, income of the wife by managing an establishment called Judy Security Service, income of the wife and daughters from Classique tailoring etc. The net salary of the accused assessed by the court was only Rs.3,99,800/=. For that Exts.P110, 104, 105, 137 and 181 were relied on. Those exhibits were proved by PW126, the Investigating Officer, himself. Exhibit D9 salary register during the check-in period was also produced. Genuineness of Ext.D9 is not questioned. As per Ext.D9 total gross salary received by him was

Rs.11,42,711/=. If car loan, building advance and GPF advance are deducted as can be seen from Exts.P100 & P105, Rs.4,73,893/= has to be added to the amount arrived at by the court as other income under the heads car loan, house loan, refundable P.F. and non-refundable P.F. As already noticed, one tailoring institute namely 'Classique tailoring' was conducted by the daughters of the appellant in partnership with mother after her retirement. Total net income for the period of four years was taken as Rs.4,38,690.50. The income claimed was Rs.7,67,713/=. Income from the tailoring shop conducted by wife of the accused and daughters was assessed after deducting the expenses. It is interesting to note that though only net income was taken, while calculating income, salary paid to employees in the tailoring shop etc. are again added as expenditure only to inflate the figures of expenditure. It is the case of the complainant that the ground floor of the same building was leased out to Indus Motor Company for Rs.6,000/= per month. His wife and two daughters were working in the tailoring shop. Their salary as well as income if it was rented out to others ought to have been taken into account and income from tailoring shop assessed is grossly inadequate. If the income is less, then they would not have conducted the business but would have rented out that space to others. The evidence adduced by PW124

would show that income from the Classique Tailoring shop is an under assessment. Apart from the above, the complainant has questioned inadequate assessment of other items of income including agricultural income etc.

4. Now, we will come to the expenditure item. Marriage expenditure was shown as Rs.1,75,000/=. Even though no valid papers are produced, that was taken as the expenditure. There is another account of expenditure of Rs.30,060/= shown as amount paid to Mr.Mahendran. Mahendran is his son-in-law. The above amount was added in the marriage expenses also. It has been come into evidence by PW22 that another Rs.15,000/= was given to the 2nd son-in-law. The payment given to Gopinath is shown as separate expenditure of Rs.15,000/=. So, Rs.45,060/- has to be deducted from the expenditure side. We have already seen that net income of Classique Tailoring shop was taken into account. But, thereafter, amount paid to Ajayakumar (Tailor) and amount paid to Nagendran (Master cutter) were shown as expenditure. If the net income is taken for assessing the income, amount paid to the employees cannot be again taken as the expenditure deducted during this period. The agricultural expenses is shown as Rs.9,953/=. The trial court in paragraph 49 found out agricultural income after deducting all expenses as Rs.2,50,000/=.

Thereafter the agricultural expenses was included in the expenditure item as Rs.9,953/=. The son of the accused has purchased a car with ICDS loan. Loan repayment of Rs.2,19,720/= was shown for purchasing Maruti. But, it is seen that the above is also added as an asset. It can be included either in the expenditure part or in the asset part. Therefore, Rs.2,19,720/= is a duplication. Now, we will come to the asset part. Building at Pattom was valued at Rs.9,06,296/=. Case of the appellant was that building permit was granted in 1979. Immediately he started construction of the building. However, he was able to construct only the pillars as well as ground floor with basement before 1.1.1980. The upper floors were not completed. That was completed after the check-in period started. It is also submitted that he purchased an old house of Justice Velu Pilla and used the old materials. The surplus materials were sold. So, Rs.4,56,296/= has to be reduced as his expenditure for constructing the building was at Rs.4,50,000/=. Expenses required for construction of building for the period from 1979 to 1981 cannot be compared with expenses that can be incurred after 10 years. Assuming that the cost of the building was Rs.9,06,296/= his definite contention is that part of the building was constructed before the check-in period as building permit was obtained in 1979. It is for the

Investigating Officer to prove the offence conclusively against the accused. Now, we will come to the evidence of Investigating Officer (PW126). He deposed that he cannot say at what stage the building construction started. However, documents would show that in 1979 itself the accused has taken a housing loan of Rs.25,000/= for starting construction from the Housing Board. He also stated that the Corporation has done the assessment twice. First the cellar portion and first floor and then balance floors and he stated that he did not enquire regarding this. He was not able to understand whether the construction was started in 1978 and ended in 1993. He further stated that according to the accused only Rs.4.5 lakhs was spent. He deposed as follows:

We have already seen that Maruti Car of his son was taken as an asset and Rs.2,10,764/= was taken as the value of the Maruti car whereas the above amount was taken as expenditure also and as already stated that has to be deducted. Another item of asset taken by the investigating officer is that he has seen medical equipments and medical books worth Rs.50,000/= in the house during search. PW123 son explained that he has obtained it from his Professor for study purposes and that is not belonging to his family. PW123 was not declared hostile and, therefore, the above Rs.50,000/= cannot be taken as asset of family of the accused.

5. The total gold ornaments of his wife and three daughters was found to be 100 Sovereigns and it valued at Rs.2,00,000/=. According to PW124, this was acquired

during the check-in period. The wife of the accused was examined as PW124. She was not declared hostile. She deposed that she received 50 sovereigns from her ancestors which was there with her from the marriage onwards and much before the check-in period. It was also stated by her that some gold ornaments were received at the time of marriage of their daughters as presents from their close relatives. She also stated that she was a Senior Accountant in Electricity Board. She was employed for long years and whenever she was able to find out excess she used to purchase gold ornaments because she was having three daughters. Further, we also note that even according to the prosecution witnesses if any ornaments was excess unaccounted earnings, it cannot be valued at the rate existed in 1994. As held by the Apex Court in **G.V.S.Lingam v. State of A.P.** (1999 Crl.L.J. 1026), if gold assets are found to be acquired by accused periodically throughout the check-in period, market value of the gold assets has to be calculated proportionately throughout this period and not on the date of the search. Here, admittedly as deposed by the Investigating Officer, market value was assessed as per the report received during the period January, 1994 and May, 1994 as can be seen from Exts.124 and 180. Valuation of 1994 cannot be taken into account for the valuation of gold ornaments allegedly procured during the period from

1.1.1980 onwards. With regard to the total gold ornaments, I am of the opinion that the inclusion of gold ornaments of wife and children as assets was not taken correctly and the entire amount should not have been taken and even if it has been taken, the valuation taken is grossly wrong. Hero Allegre Bicycle, another small item taken as an asset of the accused. The son-in-law deposed that it belonged to him. He was not cross examined with respect to that and that has to be deducted from the assets portion. It can be seen that while calculating the income of the assessee, a very inadequate assessment was made. Further, certain items are included as expenses as well as in the asset part making duplication. We have already seen that entire business and agricultural expenses were included in the expenditure items, but, in the income part, net income after deducting expenses was taken. So, apart from the fact that charges were not clear and the income of the family was not separately shown and proved, no positive evidence was adduced to show that the accused had acquired any excess or unauthorized wealth or he has disproportionate assets than the income. In fact, if duplications are avoided, assets are properly valued and income of accused and family members was assessed properly and if cost of building constructed before 1980 is reduced, there is no excess income. Accused had an

unblemished long service record.

6. Taking all these facts and totality of evidence, I am of the opinion that the charges against the accused were not proved beyond reasonable doubt. It is for the prosecution to prove the charges. Even though 126 witnesses were examined which includes wife, son, daughters and son-in-laws of the accused, except the Investigating Officer's own evidence other evidences are not helpful to the prosecution. Considering the totality of evidence and pleadings, I am of the opinion that prosecution failed to prove the offence charged against the appellant. In the above circumstances, I set aside the conviction and sentence and acquit the accused.

The appeal is allowed.

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